IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY & INTESTATE JURISDICTION

NOTICE OF MOTION NO.17 OF 2007
IN
SHOW CAUSE NOTICE NO.2 OF 2005
IN
TESTAMENTARY SUIT NO.48 OF 1989
IN
TESTAMENTARY PETITION NO.532 OF 1987

Enid A. Hayden ..Petitioner.

Vs.

Anthony C. Henriques
& Ors. ..Respondents.

Mr.R.B.Jaiswal for the Plaintiff.

Mr.Mannadiar i/b. M/s.Mannadiar & Co. for Respondent Nos.1 to 3, 4(a), 4(b), 5(a) to 5(e).

Mr.J.Reis i/b.Mr.R.N.Kachane for Respondent No.5.

Ms.Bina Rao i/b. M/s.Bina Rao & Co. for intervenor in Ch/s. No.67/07.

CORAM : S.J. VAZIFDAR, J.
DATED : 12TH OCTOBER, 2007

P.C. :

This Notice of Motion has been taken out by the Petitioner for appointment of an Administrator General under Section 247 of the Indian Succession Act to protect and manage the estate of the deceased whose Will is sought to be probated.

2. The Petitioner has also sought an order against Defendant No.4 directing him to disclose the status

of the suit property as per the order dated 9th September, 2005 passed in Chamber Summons No.1330 of 2004 and for production of a conveyance and/or other documents for sale of his 1/7th share in one his properties at Jogeshwari.

3. This is the fifth substantive Notice of Motion that the Plaintiff has taken out for similar reliefs.

A] Firstly, the Plaintiff took out Notice of Motion No.1147 of 1998 seeking the appointment of a Court Receiver and an injunction restraining the exercise of powers under powers of attorney dated 24.8.1994 and 6.9.1994. The Plaintiff further sought various other reliefs for deposit of various amounts allegedly wrongly received towards dealing with the said property.

B] By an order dated 2.7.1998 the Notice of Motion No.1147 of 1998 was dismissed. The learned Judge recorded the Plaintiff’s contention that certain orders had already been passed by the Hon’ble Bombay City Civil Court in Suit No.2722 of 1986 and noted

that if the same had been flouted, the Petitioner

was always at liberty to adopt appropriate proceedings in respect thereof. Admittedly, the Plaintiff has not done so. By the said order, the concerned Defendants were ordered to deposit certain amounts in Court. All the other reliefs were rejected.

C] The Plaintiff filed Appeal No.1114 of 2002 against the said order which was dismissed for default by an order dated 4.10.2002.

D] Mr.Jaiswal states that the said Appeal has been restored. The order restoring the Appeal however was not produced before me. I will presume that the Appeal has been restored.

4[A]. The Plaintiff thereafter took out Notice of Motion No.2127 of 2007 for transposing themselves as Plaintiff Nos.1 and 2 (they were earlier added as Defendant Nos.7 and 8). The Plaintiffs also sought an injunction and the appointment of the Court Receiver and particulars regarding the condition of the suit property.

B] The prayer for transposition was allowed.

However, the prayers for injunction and appointment of the Court Receiver were rejected in view of the said order dated 2.7.1998 in Notice of Motion No.1147 of 1998.

5[A]. The Plaintiff thereafter took out Chamber Summons No.1330 of 2003 seeking an order directing Defendant Nos.1 to 6 to file affidavits disclosing whether during the pendency of the suit any of the Defendants had sold, transferred or created third party interests and/or entered into agreements for sale of their share in the suit properties covered under the Will.

Pursuant thereto, affidavits have been filed. It appears that a show cause notice bearing No.2 of 2005 was issued against Defendant Nos.1 to 6 pursuant to the said order. The show cause notice was disposed of by an order dated 9.8.2005, recording the concerned Defendant’s apology for having made an incorrect statement and recording the statement that all the facts have thereafter been

truthfully disclosed.

B] By an order dated 11.6.2005, a learned Judge recorded the statement on behalf of the concerned Defendants that pending the hearing of the Notice of Motion, they will maintain status-quo in respect of the properties under the Will.

C] The said Chamber Summons was finally disposed of by an order dated 11.10.2005. In the meantime, the Plaintiff had taken out another Notice of Motion No.83 of 2005 which I shall deal with next.

6[A]. Notice of Motion No.83 of 2005 was filed purportedly in view of the disclosures made by the affidavits filed pursuant to the order in the Chamber Summons. The Plaintiffs once again sought the appointment of a Court Receiver and an injunction in respect of the properties under the Will and the impounding of the passport of Defendant No.3.

B] The Notice of Motion was dismissed by an order dated 14.9.2006 as not maintainable. The learned

Judge followed an order dated 9.8.2006 passed by him in Notice of Motion No.30 of 2006 in Testamentary Suit No.75 of 2005 in *Rupali Mehta v. Smt. Tina Narinder Sain Mehta*. It is pertinent to note that

the learned Judge noted that he had also considered the provisions of Section 247 of the Indian Succession Act and refused to grant any interim orders even thereunder.

C] The Plaintiff challenged the said order by filing Appeal No.913 of 2006. The said Appeal has been admitted but no interim reliefs have been granted to date.

7[A]. The Plaintiff then took out Notice of Motion No.98 of 2006 for reliefs which are identical to the reliefs claimed in the present Notice of Motion. There is absolutely no difference in the reliefs or the basis on which the same has been sought.

B] The Notice of Motion was dismissed for default by order dated 9.11.2006.

C]. The Plaintiff took out Notice of Motion No.128

of 2006 for setting aside the order dated 9.11.2006. That Notice of Motion was also dismissed by an order dated 11.1.2007.

D]. Mr.Jaiswal states that the Plaintiff has filed

Appeal (Stamp) No. 235 of 2006 but states that the same has not been served on the parties as yet.

8. In my opinion, the identical reliefs having been rejected by virtue of the aforesaid orders, it is not open to me to consider the same in the present Notice of Motion. Mr.Jaiswal however states that Notice of Motion No.98 of 2006 having been dismissed for default, I ought to ignore the fact of the dismissal thereof. I am unable to agree.

9. There are no change in circumstances. There are no extraordinary circumstances which warrant my entertaining the application for identical reliefs despite the orders of the learned Single Judge dated 9.11.2006 and 11.1.2007. Judicial discipline demands the same.

10. In any event, the Plaintiff is not prejudiced

as three Appeals viz. Appeal No.1114 of 2002, 913 of 2006 and Appeal (L) No.235 of 2006 are pending before the learned Appeal Courts.

Mr.Jaiswal states that applications for interim reliefs were made before the Appeal Court but that

he had not obtained any interim relief. That is not a ground for re-agitating the same points before me in a fresh Notice of Motion. I do not think any further reasons are required in support of this view.

11. In the circumstances, the Notice of Motion is dismissed.

12. The suit has been expedited. To show their bona-fides, the Respondents have expressed their willingness to bear the costs of the learned Commissioner, if appointed, for recording of evidence among themselves. The Plaintiffs are not willing to have the evidence recorded on commission.